

California Homeowner Bill of Rights

Attorney General Kamala D. Harris is sponsoring a six-bill package, entitled the “California Homeowner Bill of Rights” as described below:

- AB 1602 (Eng & Feuer)/SB 1470 (Leno, Pavley, & Steinberg) – dual track. These bills would prohibit creditors from recording a notice of default or notice of sale when a borrower has applied for a loan modification or other loss mitigation measure and that application is pending. The bills would prohibit servicers from recording a notice of sale while a borrower is in compliance with the terms of a trial loan modification or after another loss mitigation measure has been approved. The bills would establish an Office of Homeowner Protection to help respond to borrower inquiries about and complaints regarding compliance with the new rules, and provide for enforcement mechanisms, as specified. AB 1602 was referred to the Assembly Banking and Finance and Judiciary Committees. SB 1470 was referred to the Senate Banking and Financial Institutions and Judiciary Committees.
- AB 2425 (Mitchell)/SB 1471 (DeSaulnier & Pavley) – due process. These bills would require servicers to provide borrowers with a single point of contact and would prohibit any robo-signed document, as defined, from being recorded or filed with any court. AB 2425 was referred to the Assembly Banking and Finance and Judiciary Committees. SB 1471 was referred to the Senate Banking and Financial Institutions and Judiciary Committees.
- AB 2314 (Carter)/SB 1472 (Pavley & DeSaulnier) – blight: These bills would delete the sunset date on current law which permits local governments to impose fines of up to \$1,000 per day on owners of blighted property. The bills would also provide purchasers of foreclosed residential properties 60 days to remedy code violations before being subject to enforcement actions and would allow the imposition of the costs of a receivership on blighted property to be imposed directly against the owner of the blighted property. SB 1472 has passed the Senate and is pending referral in the Assembly. AB 2314 has passed the Assembly and is pending referral in the Senate.
- AB 2610 (Skinner)/SB 1473 (Hancock) – landlord-tenant: These bills would require purchasers of foreclosed properties to honor the terms of existing leases, except as specified, and would give tenants at least 90-days’ notice before eviction proceedings could begin. AB 2610 is pending in the Assembly Appropriations Committee, and SB 1473 is pending in the Senate Appropriations Committee.
- AB 1950 (Davis) – loan modification fees: This bill would delete the sunset on existing law which prohibits the charging of upfront fees for loan modification

services. This bill is pending in the Assembly Appropriations Committee.

- AB 1763 (Davis)/SB 1474 (Hancock) – grand juries: These bills would authorize the Attorney General to impanel a special grand jury in specified counties to investigate, consider, or issue indictments in matters in which there are multiple activities, in which fraud or theft is a material element, that have occurred in more than one county and conducted either by a single defendant or multiple defendants acting in concert. AB 1763 is pending in the Assembly Appropriations Committee, and SB 1474 has been referred to the Senate Appropriations Committee suspense calendar.

Significant Chaptered Legislation

In an effort to help those for whom foreclosure may be avoided, the Legislature passed, and the Governor signed, SB 1137 (Perata, Corbett, Machado), and two identical bills, SBx2 7(Corbett) and ABx2 7 (Lieu). SB 1137 was an urgency bill, which was chaptered in July 2008 and applies its provisions through calendar year 2012. SBx2 7 and ABx2 7 were enacted in February 2009 and, as extraordinary session bills, took effect 90 days following their enactment. SBx2 7 and ABx2 7 both sunset on January 1, 2011.

a. SB 1137 (Perata, Corbett, Machado, Chapter 69, Statutes of 2008)

Since the beginning of the mortgage crisis, there has been a focus on the importance of encouraging the modification of loans to prevent avoidable foreclosures. The modification of those loans, when appropriate, helps keep homeowners in their homes, while generating income for the holder of the note. This mutually agreed upon solution avoids a potential foreclosure and the associated costs that foreclosure imposes on servicers, homeowners, and surrounding properties.

- **Mandatory contact at least 30 days prior to filing a Notice of Default** (Only applies in the specific circumstances described below)

With those principles in mind, SB 1137 required the lender or servicer of the loan to contact the borrower, or to try with due diligence to contact the borrower, at least 30 days prior to filing the NOD. Requiring lenders and servicers to contact borrowers before recording an NOD was intended to give the lender or servicer an opportunity to assess the borrower's financial situation and explore options that would allow the borrower to avoid foreclosure. SB 1137 also required that borrowers be advised of their right to request a subsequent meeting with the lender or servicer, and be provided with a toll free number to find a HUD-certified housing counseling agency.

Unlike the tenant protections below, the contact requirements of SB 1137 apply only to loans originated between January 2003 and December 2007, which are secured by owner-occupied residential real property, where the borrower has not filed for

bankruptcy, surrendered the property, or contracted with an entity to extend the foreclosure process. By facilitating early contact between borrowers and lenders, the bill sought to avoid unnecessary foreclosures and facilitate the modification or restructuring of loans in appropriate circumstances.

- **Tenant protections require additional notice prior to sale, and a 60 day notice prior to eviction after foreclosure**

SB 1137 also sought to address some of the issues facing tenants of foreclosed properties. Unlike owners who may have known for many months that the property was heading towards a foreclosure sale, tenants who are renting properties are generally unaware whether the mortgage on that property is paid, the home is at risk of foreclosure, or even whether the owner plans on walking away from his or her investment. Language barriers, and English only notices, further complicate the issue of notifying tenants when their rental home may be sold at a foreclosure sale.

To address some of those issues, SB 1137 provided that tenants must: (1) be mailed a statutory notice in six languages, at the time of the notice of sale, that informs the tenant that the property they are renting is in foreclosure; and (2) be given at least 60-days' notice before they may be evicted after a foreclosure sale. Subsequent to the enactment of SB 1137, President Obama signed the Protecting Tenants at Foreclosure Act of 2009 (PTFA), P.L. 111-22, which further required that tenants of foreclosed homes receive a 90-day notice to vacate. In addition, the PTFA generally requires the purchaser of a home at a foreclosure sale to honor the tenant's lease, unless the purchaser intends to occupy the home as their primary residence. The PTFA sunsets on December 31, 2014.

- **Anti-bligh provisions**

There are many negative side effects that a foreclosure can have upon a community, including the possibility that the property will be vandalized by the borrower who was unable to avoid foreclosure, or that a vacant property will fall into disrepair, attract vandals, and pose a health and safety risk. Deteriorating, blighted properties may also depress surrounding property values.

In response to those concerns, SB 1137 required legal owners to maintain vacant residential properties that were purchased at a foreclosure sale. SB 1137 defined "failure to maintain" as the failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers from remaining on the property, failing to take action to prevent mosquito larvae from growing in standing water, or other conditions that create a public nuisance.

To enforce this maintenance requirement, government entities were given the authority to impose a civil fine of up to \$1,000 per day per violation. Under the provisions of SB 1137, government entities are required to provide notice of their intent to impose a fine, if corrective action is not commenced within 14 days and completed within 30 days. Those anti-blight provisions sought to encourage the repair of foreclosed homes, while providing a penalty should residences not be repaired in the time allowed.

b. SBX2-7 (Corbett, Chapter 4, Statutes of 2009) and ABX2-7 (Lieu, Chapter 5, Statutes of 2009), the California Foreclosure Prevention Act

Enacted in a special session of the Legislature, SBX2-7 and ABX2-7 (collectively known as the “7s”), enacted the California Foreclosure Prevention Act “to provide additional time for borrowers to work out loan modifications while providing an exemption for mortgage loan servicers that have implemented a comprehensive loan modification program.” Specifically, the 7s (which sunsetted on January 1, 2011) added 90 days to the nonjudicial foreclosure process. The bills allowed servicers to apply for an exemption from this 90-day delay, by demonstrating to the appropriate commissioner that the servicer had implemented a comprehensive loan modification program. In order for a servicer to qualify for a final order of exemption, its comprehensive loan modification program must: (1) intend to keep borrowers in their homes when the recovery under the loan modification exceeds recovery through foreclosure; (2) target a debt-to-income ratio of 38 percent or less; and (3) include a combination of various other specified features, such as reducing interest rate or principal.

Other Legislation

SB 729 (Leno & Steinberg) of 2011

This bill would have required a servicer to process an application for a loan modification prior to recording a Notice of Default (NOD). This bill would, among other things, require a declaration of compliance to be recorded to certify compliance with the bill’s provisions, and require the foreclosing entity to attach proof of ownership of the mortgage or deed of trust. The bill failed passage in the Senate Banking and Financial Institutions Committee.

SB 1275 (Leno & Steinberg) of 2010

SB 1275 would have required loan servicers to process loan modification applications prior to commencing the foreclosure process, and if the application is denied, would have required servicers to provide homeowners with a letter detailing the reasons for denial. The bill also sought to add statutory remedies for violations of the nonjudicial foreclosure process. The bill failed passage on the Assembly floor.

AB 1639 (Nava, Bass, & Lieu) of 2010

This bill would have established a foreclosure mediation program that would allow borrowers to request a mediation session with their servicers in order to reach an agreement on loss mitigation options. This bill failed passage on the Assembly floor.